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3                   **UNITED STATES DISTRICT COURT**  
4                   **NORTHERN DISTRICT OF CALIFORNIA**  
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6 EXECUTIVE LENS LLC,  
7

8                   Plaintiff,  
9                   vs.  
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11 LEE RAPKIN and JOHN DOE dba “THE  
12 Exposer” www.youtube.com/@laAudits  
13 Exposé,  
14

15                   Defendants.  
16  
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18  
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22 Case No. 25-cv-06048-NC  
23

24                   **JOINT CASE MANAGEMENT**  
25                   **STATEMENT & [PROPOSED]**  
26                   **ORDER**  
27

28                   **Date: December 17, 2025**  
29                   **Time: 10:00 a.m.**  
30                   **Place: Videoconference**  
31                   **Judge: Hon. Nathanael Cousins**  
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Pursuant to the Standing Order for All Judges of the Northern District of California, this Court's July 18, 2024 Order (ECF No. 4), September 22, 2025 Order (ECF No. 9) Federal Rule of Civil Procedure 16 and Civil L.R. 16-9, plaintiff Executive Lens LLC ("Plaintiff") and defendant Lee Rapkin ("Defendant Rapkin" or "Ms. Rapkin") (collectively, the "Parties") in the above-entitled action jointly submit this Joint Case Management Statement & Proposed Order.

## **I. JURISDICTION & SERVICE**

The Parties agree that this Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the Copyright Act, 17 U.S.C. § 101 et seq., and the Digital Millennium Copyright Act ("DMCA"), 17 U.S.C. § 512.

The Parties further agree that venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a), as a substantial portion of the events giving rise to the claims occurred here.

### **A. Plaintiff's Position:**

Personal jurisdiction is proper because Defendants expressly consented to jurisdiction in this District by submitting DMCA counter-notifications pursuant to 17 U.S.C. § 512(g)(3), which designate the Northern District of California as the appropriate forum for any action arising from the disputed takedowns.

### **B. Defendant Rapkin's Position:**

Ms. Rapkin agrees that personal jurisdiction is proper as to Plaintiff's claim against her. Ms. Rapkin takes no position on whether personal jurisdiction over defendant JOHN DOE dba "THE Exposer" www.youtube.com/@1aAudits Exposé ("John Doe dba the Exposer") is proper, and/or whether John Doe dba the Exposer, who has not yet appeared or been served, expressly, or otherwise, consented to jurisdiction in this District.

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1       **II. FACTS**

2       **A. Plaintiff's Statement of Facts**

3       Plaintiff Executive Lens LLC is the owner, by written assignment, of the exclusive  
4 rights in and to the videos originally created and published by Christopher J. Cordova on  
5 the YouTube channel "Denver Metro Audits" (@DenverMetroAudits). In June and July  
6 2025, Plaintiff identified 31 videos on the YouTube channel "1A Audits Exposé," operated  
7 anonymously under the alias "The Exposer," that incorporated substantial portions of  
8 Plaintiff's copyrighted works. Sixteen of those videos were Shorts and fifteen were long-  
9 form videos.

10      On July 4, 2025, Plaintiff submitted DMCA takedown notices ("Takedown  
11 Notices") to YouTube for 27 of the 31 videos. YouTube removed sixteen Shorts and one  
12 long-form video. The remaining ten long-form videos and three Shorts were placed in  
13 private mode by the channel owner.

14      On July 14, 2025, attorney Lee Rapkin submitted a blanket DMCA counter-  
15 notification to YouTube on behalf of the anonymous operator of the Exposé channel. The  
16 counter-notice purported to cover seventeen videos and asserted under penalty of perjury  
17 that each video was "significantly transformed by detailed editing and elaborate  
18 commentary throughout."

19      The counter-notice did not identify the client in whose name the counter-notification  
20 was submitted, despite the statutory requirement that a counter-notifying subscriber  
21 provide their name, address, and telephone number. Attorney Rapkin has refused to  
22 disclose the identity of the client since the filing of the complaint. The counter-notification  
23 also did not identify which specific videos were allegedly transformed, did not describe  
24 any transformative editing, and did not provide any factual basis for the assertion that all  
25 seventeen videos contained "elaborate commentary throughout," even though many of the  
26 videos at issue contain little or no commentary at all.  
27

1 Plaintiff issued a subpoena under 17 U.S.C. § 512(h) to Google seeking the identity  
2 of the counter-notifying party and the operator of the Exposé channel. Google declined to  
3 provide that information and stated it would not comply with a § 512(h) subpoena under  
4 the circumstances presented. As a result, the identity of the Doe defendant remains  
5 unknown. Neither Defendant Rapkin nor Google has provided any information identifying  
6 the individual who submitted the counter-notification, and Plaintiff remains unable to  
7 determine who directed the submission of the sworn counter-notice.

8 Subsequent to the filing of the complaint, three of the videos at issue were registered  
9 with the United States Copyright Office, and registration certificates have now been issued.

10 Plaintiff filed this action on July 17, 2025, seeking damages for material  
11 misrepresentations in the counter-notice and a declaration that the seventeen videos  
12 identified in the counter-notice do not qualify as fair use. Since the filing of the complaint,  
13 neither attorney Rapkin nor Google has provided any identifying information regarding the  
14 individual behind the Exposé channel.

15 **B. Defendants' Statement of Facts**

16 Plaintiff contends that Ms. Rapkin, a Canadian attorney, violated the Digital  
17 Millennium Copyright Act (“DMCA”) by representing in a DMCA counter-notice to  
18 YouTube (the “Counter Notice”) that certain videos that her client allegedly posted to  
19 YouTube (“Subject Videos”) fell within the fair use doctrine. In addition to Ms. Rapkin,  
20 Plaintiff has sued John Doe dba the Exposer, who was Ms. Rapkin’s client. Plaintiff seeks  
21 to impose liability on Ms. Rapkin under the DMCA.

22 First, Plaintiff’s claim fails because liability for a misrepresentation in a counter-  
23 notice under 17 U.S.C. § 512 of the DMCA exists *only* where damages occurred because  
24 the online service provider (here, YouTube) relied on the misrepresentation “in replacing  
25 the removed material or ceasing to disable access to it.” 17 U.S.C. § 512(f)(2) (emphasis  
26 added). As Plaintiff concedes in the complaint, YouTube *has not* reinstated access to the  
27  
28

1 Subject Videos.

2 Second, Plaintiff theorizes that Ms. Rapkin “falsely represented” in the Counter  
 3 Notice: “(1) that each of the 17-Videos [Subject Videos] ‘was significantly transformed by  
 4 detailed editing and elaborate commentary throughout’; and (2) that each video was  
 5 protected by fair use and removed ‘due to a mistake or misidentification.’” Compl. ¶ 54.  
 6 Both theories fail. Defendant Rapkin did not act with subjective bad faith or with actual  
 7 knowledge of material falsity with respect to either alleged misrepresentation and there are  
 8 no alleged facts supporting these theories.

9 Although Ms. Rapkin has not yet voluntarily provided Plaintiff with the identity of  
 10 the individual associated with the YouTube account that is the subject of the DMCA  
 11 Counter-Notice, she is still considering Plaintiff’s request for that information, and has not  
 12 yet indicated how she would respond to a valid discovery request for that information.

13 **III. LEGAL ISSUES**

14 1. Whether Plaintiff is the owner of copyrighted works that Plaintiff alleges were  
 15 infringed by John Doe dba the Exposer in the videos that are the subject of Plaintiff’s  
 16 Takedown Notices.

17 2. Whether John Doe dba the Exposer’s alleged use of Plaintiff’s copyrighted  
 18 video content in the videos that are the subject of Plaintiff’s complaint amounted to  
 19 copyright infringement, including whether John Doe dba the Exposer’s alleged use of the  
 20 videos was subject to protection under the fair use doctrine. *See* 17 U.S.C. § 107.

21 3. Whether Defendants’ DMCA counter-notification contained material  
 22 misrepresentations in violation of 17 U.S.C. § 512(f).

23 4. Whether Ms. Rapkin’s refusal to identify the subscriber who operates that 1a  
 24 Audits Exposé is a violation of 17 U.S.C. §§ 512(f) and (g).

25 5. Whether Plaintiff can maintain a claim for violations of the DMCA (17 U.S.C.  
 26 § 512(f)) in light of the fact that YouTube never replaced the videos that are the subject of

1 Plaintiff's complaint.

2       6. Whether Plaintiff alleged facts in the complaint (Dkt. 1) that, if true, could  
 3 establish that Ms. Rapkin "knowingly materially misrepresented" that YouTube "removed  
 4 or disabled by mistake or misidentification" the videos that are the subject of Plaintiff's  
 5 complaint and establish a violation under the DMCA

6       7. Whether Plaintiff is entitled to damages, injunctive relief, or attorneys' fees  
 7 under the Copyright Act or the DMCA.

#### 8       **IV. MOTIONS**

9       Ms. Rapkin filed a Motion to Dismiss, seeking an order dismissing Plaintiff's  
 10 complaint (Dkt. 1) against Ms. Rapkin, in its entirety and without leave to amend, pursuant  
 11 to Rule 12(b)(6) of the Federal Rules of Civil Procedure. In the event the Court denies this  
 12 motion, Ms. Rapkin anticipates pursuing other dispositive motions, including, without  
 13 limitation, a motion for summary judgement.

#### 15       **V. AMENDMENT OF PLEADINGS**

16       Plaintiff intends to file a First Amended Complaint to add claims for copyright  
 17 infringement based on the recently registered works and to incorporate additional factual  
 18 allegations responsive to issues raised in Defendant Rapkin's Motion to Dismiss, including  
 19 allegations concerning Ms. Rapkin's misrepresentations in the DMCA counter-  
 20 notification. Plaintiff's amendment will moot the pending Motion to Dismiss, and the  
 21 Parties intend to confer regarding a stipulated schedule for Defendant Rapkin's response  
 22 to the First Amended Complaint.

#### 23       **VI. EVIDENCE PRESERVATION**

24       The Parties certify that they have reviewed the ESI Guidelines, and confirm that they  
 25 have met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and  
 26 proportionate steps taken to preserve evidence relevant to the issues reasonably evident in  
 27 this action.

1       The Parties do not anticipate any issues concerning evidence preservation at this  
2 time but will promptly raise any disputes with the Court if they arise.

3 **VII.       DISCLOSURES**

4       **A.       Plaintiff's Position**

5       The Parties' Rule 26(a)(1) Initial Disclosures are due on December 10, 2025, the  
6 same date as the deadline for this Joint Statement. Plaintiff will timely serve its disclosures  
7 on that date. Plaintiff notes that Defendant Rapkin has previously declined to identify the  
8 counter-notifying party in her DMCA counter-notification, and Plaintiff anticipates that the  
9 required identification of individuals likely to have discoverable information under Rule  
10 26(a)(1)(A)(i) may not include the subscriber who submitted the counter-notification. If  
11 Defendant Rapkin does not serve her Initial Disclosures prior to the Case Management  
12 Conference, Plaintiff will not have the ability to raise any deficiencies in those disclosures  
13 at the conference.

14       **B.       Defendant Rapkin's Position**

15       Ms. Rapkin will also serve her Rule 26(a) Initial Disclosures on December 10, 2025.  
16 Although Ms. Rapkin has not yet voluntarily provided Plaintiff with the identity of the  
17 individual associated with the YouTube account that is the subject of the DMCA Counter-  
18 Notice, she is still considering Plaintiff's request for that information, and has not yet  
19 indicated how she would respond to a valid discovery request for that information.

20 **VIII.       DISCOVERY**

21       No discovery has been conducted to date. The Parties have discussed the scope of  
22 anticipated discovery and agree that discovery should proceed in accordance with the  
23 Federal Rules of Civil Procedure and this Court's local rules.

24       Given the limited volume of electronically stored information (ESI) anticipated, the  
25 Parties do not presently expect to require e-discovery vendors, formal search protocols, or  
26 specialized review platforms. The Parties will cooperate in good faith to exchange relevant  
27 materials in native or reasonably usable format and will meet and confer regarding a  
28 stipulated E-Discovery Order if the need arises.

1           **IX. CLASS ACTION**

2         This is not a class action.

3           **X. RELATED CASES**

4         There are no related cases.

5           **XI. RELIEF**

6           **A. Plaintiff's Position**

7         Plaintiff seeks relief under 17 U.S.C. § 512(f) for Defendants' alleged knowing and  
 8 material misrepresentations in DMCA counter-notifications submitted to YouTube,  
 9 including recovery of actual damages, expenses, and attorneys' fees.

10       Plaintiff also seeks relief for copyright infringement arising from the 1a Audits  
 11 Exposé's use and publication of Plaintiff's copyrighted videos. Since the filing of the  
 12 complaint, three of the videos at issue have been registered with the U.S. Copyright Office,  
 13 and Plaintiff seeks the full remedies available for infringement of those registered works.

14       Plaintiff seeks injunctive relief prohibiting Defendants from further using,  
 15 publishing, monetizing, or reposting the copyrighted videos identified in this action.

16       Plaintiff seeks declaratory relief only with respect to any works identified in the  
 17 complaint that remain unregistered.

18           **B. Defendants' Position:**

19       As noted in Ms. Rapkin's Motion to Dismiss, Ms. Rapkin requests an order  
 20 dismissing Plaintiff's complaint (Dkt. 1) against her, in its entirety and without leave to  
 21 amend, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

22       Ms. Rapkin prays for judgment as follows:

- 23       1. That Plaintiff takes nothing by reason of Plaintiff's complaint (Dkt. 1) and  
 24 for judgment in favor of Defendant Rapkin;
- 25       2. That Defendant Rapkin be awarded costs of suit incurred herein; and
- 26       3. For such other and further relief as the Court deems necessary, just and proper.

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1           **XII. SETTLEMENT AND ADR**

2       Pursuant to ADR Local Rule 3-5, the Parties have reviewed the ADR Handbook,  
 3 discussed it with their counsel, and come to the following conclusions: the parties are open  
 4 to a Settlement Conference with a Magistrate Judge.

5           **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

6       The Parties who have been severed and appeared in the action, Plaintiff and Ms.  
 7 Rapkin, consent to the jurisdiction of Magistrate Judge Cousins for all purposes.

8           **XIV. OTHER REFERENCES**

9       The Parties do not believe that this case is suitable for reference to binding  
 10 arbitration, special master, or the Judicial Panel on Multidistrict Litigation.

11          **XV. NARROWING OF ISSUES**

12       The parties do not believe that it is possible to narrow the issues at this time. The  
 13 parties anticipate potential narrowing after discovery on ownership and counter-notice  
 14 authenticity.

15          **XVI. EXPEDITED TRIAL PROCEDURE**

16       The Parties do not believe that this case is appropriate to be handled under the  
 17 Expedited Trial Procedure of General Order 64.

18          **XVII. SCHEDULING**

19 <b>Event</b>	<b>Proposed Deadline</b>
20       Completion of Fact Discovery	September 30, 2026
21       Expert Disclosures	October 31, 2026
22       Rebuttal Expert Disclosures	November 21, 2026
23       Completion of Expert Discovery	December 18, 2026
24       Deadline to File Dispositive Motions	January 29, 2027
25       Pretrial Conference	March 31, 2027
26       Bench Trial (Estimated 2 days)	May 10, 2027

27          **XVIII. TRIAL**

28       The Parties consent to a bench trial (estimated 2 days).

1           **XIX.       DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR**  
 2           **PERSONS**

3           Plaintiff has filed the required certification; no non-party interested entities other  
 4           than Google LLC (YouTube) may be implicated.

5           Defendant Rapkin has filed the required certification and identified the following  
 6           entities that have a financial interest and/or other interest in the subject matter in  
 7           controversy: (1) BLP Avocats; and (2) Fonds d'assurance responsabilité professionnelle  
 8           du Barreau du Québec.

9           **XX.       PROFESSIONAL CONDUCT**

10          Counsel have reviewed the Guidelines for Professional Conduct for the Northern  
 11         District of California and will comply.

12          **XXI.       OTHER**

13          By signing this Joint Case Management Statement and [Proposed] Order, the counsel  
 14         for each party listed below concur in its filing.

15          Dated: December 10, 2025

s/ Randall S. Newman

16          Randall S. Newman, Esq. (190547)  
 17          99 Wall Street, Suite 3727  
 18          New York, NY 10005  
 19          (212) 797-3735  
 20          rsn@randallnewman.net

21          *Attorney for Plaintiff,  
 22           Executive Lens, LLC*

23          Dated: December 10, 2025

CLYDE & CO US LLP

24          By: /s/ Brandon K. Franklin

25          KEVIN R. SUTHERLAND  
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6

7 *Attorneys for Defendant.*  
8 *Lee Rapkin*

9 **CASE MANAGEMENT ORDER**

10 The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is  
11 approved as the Case Management Order for this case and all parties shall comply with its  
12 provisions. [In addition, the Court makes the further orders stated below:]  
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14 IT IS SO ORDERED.  
15 Dated:

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17 NATHANAEL COUSINS, UNITED  
18 STATES MAGISTRATE JUDGE  
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